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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

OMAR RODRIGUEZ; CINDY GUILLEN-
GOMEZ; STEVE KARAGIOSIAN;
ELFEGO RODRIGUEZ; AND JAMAL CHILDS,

Plaintiffs,

-vs-

BURBANK POLICE DEPARTMENT; CITY OF
BURBANK; AND DOES 1 THROUGH 100,
INCLUSIVE.

Defendants.

BURBANK POLICE DEPARTMENT; CITY OF
BURBANK,

Cross-Complainants,

-vs-

OMAR RODRIGUEZ, and Individual,

Cross- Defendant.

CASE NO.: BC 414 602

Assigned to: Hon. Joanne B. O'Donnell, Judge

PLAINTIFFS':

(1) OPPOSITION TO MOTION FOR
MONETARY SANCTIONS FOR MISUSE OF
THE DISCOVERY PROCESS;

(2) REQUEST FOR SANCTIONS OF \$2,285.00
AGAINST DEFENDANTS AND
DEFENDANTS' COUNSEL, LAWRENCE A.
MICHAELS FOR MISUSE OF THE
DISCOVERY PROCESS; AND

(3) AN ORDER REQUIRING DEFENDANTS
TO PAY FOR DISCOVERY REFEREE'S
SERVICES RE: THIS MOTION;

MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
SOLOMON E. GRESEN; DECLARATION OF
JOSEPH M. LEVY

[Filed concurrently herewith: [PROPOSED]
REFEREE'S RECOMMENDATION; and
[PROPOSED] ORDER]

Hearing:

Date: June 29, 2010

Time: 10:00 a.m.

Place: 707 Wilshire Blvd., 46th Floor
Los Angeles, CA 90017

1 **I. INTRODUCTION**

2 On February 23, 2010, Plaintiff's counsel Solomon Gresen suspended the deposition of third-
3 party witness Nayiri Nahabedian, shortly after she informed him for the first time that she needed to
4 leave for a civic duty function in Glendale. Mr. Gresen agreed to suspend the deposition until such
5 time that the witness was available. Upon hearing that the witness needed to leave, Carol Humiston,
6 attorney for Defendants, attempted to force Ms. Nahabedian to stay and give additional testimony –
7 even after Ms. Nahabedian affirmatively responded on the record that she was unable to continue.
8 (Deposition of Nayiri Nahabedian 74:9-75:4, attached hereto as Exhibit "A") Because Ms.
9 Humiston's attempt to restrain Ms. Nahabedian under color of legal authority while raising her voice
10 is abusive – especially after Ms. Nahabedian agreed on the record to submit to a second a second
11 session – Mr. Gresen concluded the deposition. Mr. Gresen had to speak to Ms. Nahabedian after
12 the deposition to calm her down due to Ms. Humiston's behavior.

13 Before unnecessarily expending money by seeking a protective order, however, Mr. Gresen
14 repeatedly advised Defendants to schedule the second session of Ms. Nahabedian with his office,
15 which Plaintiff would pay for. He further advised that if Defendants wished to take discovery
16 priority over Ms. Nahabedian's deposition scheduling date, order of questioning, and conditions of
17 deposition, Defendants were also free to subpoena and notice her deposition themselves.¹

18 Defendants have insisted on taking the second session of deposition on their own terms and
19 conditions. However, instead of just scheduling the deposition themselves, Defendants have decided
20 to waste the parties' time and money by filing this abusive, unjustified discovery motion.

21 Plaintiff further points out that Defendants have wholly misrepresented the sum and
22 substance of the "meet and confer" e-mails between Lawrence Michaels and Solomon Gresen in
23 their initial Motion, making it seem as though Mr. Gresen unreasonably demanded that Defendants
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27 ¹Ms. Humiston clearly expected that there would be a second session of deposition **even if she**
28 **had asked the questions she was demanding at the first session.** "MS. HUMISTON: I'm going to
ask her the questions with respect to the issues that you've asked her the questions about, and then she
can come back and we can talk about these documents and other issues--" (Exhibit "A" 76:17-21)

1 pay for the second session or it would not go forward.² (See true and correct copies of the April 16,
2 2010 e-mail and April 21, 2010 e-mail, attached hereto as Exhibit “B” and Exhibit “C”,
3 respectively). Throughout these e-mails, Mr. Gresen was “happy to begin [the second session] at
4 10:00 a.m., and schedule for the full day, so that [the Defendants] should have sufficient time
5 following the conclusion of [Plaintiffs’] examination” to conduct their own examination.” (Exhibit
6 “C”). Plaintiffs were always willing to pay for the second session of Ms. Nahabedian’s deposition.
7 However, Defendants unreasonably demanded that the second session of deposition be resumed
8 pursuant to the exact same conditions that were present in the original deposition, and on their
9 timeline. (See Wednesday, April 28, 2010 E-mail, a true and correct copy of which is attached as
10 Exhibit “D”) Mr. Gresen, in his last “meet and confer” e-mail finally responded that if Defendants
11 wished to set the conditions and the timeline of Ms. Nahabedian’s second session, then, once again,
12 they were free to schedule and notice her deposition themselves. (May 8, 2010 e-mail, a true and
13 correct copy of which is attached as Exhibit “E”)

14 **Defendants have cited no legal authority whatsoever in support of their position that all**
15 **sessions of Ms. Nahabedian’s deposition must take place under the exact same conditions as**
16 **the first.** They have been free to notice Ms. Nahabedian’s deposition at their leisure for months.
17 Instead, they have wasted the Court’s time with this legally baseless motion, and should be
18 sanctioned in the amount of \$2,285.00 for misuse of the discovery process.

19 **II. STATEMENT OF FACTS**

20 Mr. Gresen noticed the deposition of third-party witness Nayiri Nahabedian for 3:00 p.m. on
21 February 23, 2010. Initially, neither Ms. Nahabeidian nor Mr. Gresen anticipated the deposition to
22 last much longer than 5:00 that afternoon. (Gresen Decl ¶ 4, Exhibit “A” 74:10-13). However, Ms.
23 Nahabedian arrived late to the deposition, and had voluminous documents in her car that she wanted
24

25 ²The Court should note that Defendants did not attempt to address the issue with Mr. Gresen
26 regarding the second session of Ms. Nahabedian’s deposition until three weeks after Plaintiff Jamal
27 Child’s Motion for Summary Judgment (“MSJ”) was ruled upon, making any argument by Defendants
28 that they have been deprived of an opportunity to make an argument in their Reply Brief to the MSJ ring
hollow. Defendants certainly did not insist that they cross-examine Ms. Nahabedian after receiving
Plaintiff’s Opposition to MSJ. Defendants sought no relief whatsoever to try and take Ms.
Nahabedian’s second session of deposition prior to filing their reply – not even a letter or a telephone
call – which Plaintiffs would have accommodated.

1 to review and testify regarding:

2 By Mr. Gresen: "Q: Okay. I would like to review the documents that you have. You said
3 you have some notes that you wanted to review. I wanted to give you an opportunity to review them;
4 but as Ms. Humiston noted, it would be great if we could have a copy of those. I'll make copies for
5 everybody, and then we'll give you a period of time to look them over, and then we can –

6 A: All right....[]

7 Q: I'll go ahead and make copies for everybody. We'll go off the record, and we'll let you
8 have 20 minutes to resume. As soon as you're done, we'll come back on.

9 A: Great." (Exhibit "A" 69:22-70:17).

10 The documents Ms. Nahabedian retrieved totaled in excess of 100 pages, and took
11 approximately 40 minutes for her to review and to copy for all parties. (Gresen Decl ¶ 5) During
12 this time, Ms. Nahabedian also told Mr. Gresen for the first time that she absolutely had to be in
13 Glendale that evening at 6:00 for a civic duty presentation, and did not realize that the deposition
14 would last past 5:00. (Gresen Decl ¶6) Mr. Gresen told Ms. Nahabedian that he would continue the
15 deposition to a later date when she was available, so long as she agreed on the record to accept
16 service of another subpoena and appear for further deposition testimony (Gresen Decl ¶7)

17 On the record, Ms. Nahabedian repeated that she would appear for a second session of
18 deposition due to her unavailability advises no longer available that day to testify. Ms. Humiston,
19 enraged that the witness was no longer available for testimony, attempted to force Ms. Nahabedian to
20 stay for additional questioning. She raised her voice, demanding that she and Mr. Gresen switch
21 seats, and loudly insisted that she was going to ask questions. (Gresen Decl ¶8) Seeing that Ms.
22 Nahabedian looked shocked and upset at Ms. Humiston's hostile demeanor and insistence that she
23 stay past her availability, Mr. Gresen said that he would seek a protective order. (Gresen Decl ¶ 9)
24 Afterwards, Mr. Gresen needed to speak with Ms. Nahabedian for a few minutes to calm her down
25 and assure Ms. Nahabedian that Ms. Humiston did not have the ability to cause legal trouble due to
26 the manner in which the deposition concluded. (Gresen Decl ¶10)

27 Seven weeks later, Larry Michaels contacted Mr. Gresen to meet and confer regarding the
28 deposition. Mr. Gresen responded that Plaintiffs had no objection to rescheduling the deposition,

1 provided that the deposition is conducted before the discovery referee.³ (A true and correct copy of
2 that letter is attached hereto as Exhibit “F”).

3 On Friday, April 16 Mr. Michaels responded that “we will proceed with the deposition as you
4 suggest,” (i.e. agreeing to the discovery referee) but insisted that the second session have a
5 videographer that Plaintiff pay for. On April 21, 2010 Mr. Gresen told Mr. Michaels that if
6 Defendants wished to control the conditions of the second session of deposition, they were free to
7 notice it themselves. (A true and correct copy of that letter is attached hereto as Exhibit “C”).
8 Otherwise, Plaintiff would control the conditions of the second session of deposition, which would
9 include sufficient time following the conclusion of Plaintiff’s examination for Defendants’
10 examination of the witness.

11 On April 28, 2010 Mr. Michaels kept insisting that the deposition “had to be resumed
12 pursuant to the original deposition notice,” something that the Plaintiffs had already said that they
13 were not willing to do. (A true and correct copy of that letter is attached hereto as Exhibit “D”).
14 Finally, Mr. Gresen, who was in the middle of a two week trial, responded that Defendants should,
15 therefore, notice the deposition. (A true and correct copy of that letter is attached hereto as Exhibit
16 “E”).

17 **III. MR. GRESSEN PROPERLY SUSPENDED THE DEPOSITION OF NAYIRI**
18 **NAHABEDIAN**

19 Mr. Gresen ultimately suspended the deposition “on the ground that the examination [was]
20 being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that
21 deponent or party.” Cal Code Civ Proc § 2025.470

22 The deposition ended because Ms. Nahabedian was no longer available to give testimony.
23 She had made it absolutely clear on the record that she needed to be in Glendale that evening, and
24 could no longer stay. Mr. Gresen clearly had no idea that Ms. Nahabedian’s deposition would take
25 such a long period of time, or that much of the time would be taken up by the copying and review of
26
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28 _____
³The use of the discovery referee at deposition was standard by this time in the litigation.

1 documents.⁴ When the deposition resumed, Ms. Nahabedian made it crystal clear that she was no
2 longer available to give testimony. (Exhibit “A”: 74:9 -75:4).

3 Ms. Humiston simply did not want to accommodate, and said exactly that on the record. Ms.
4 Humiston was determined that she would get to ask questions, regardless of Ms. Nahabedian’s
5 unequivocal assertion that she needed to leave. Mr. Gresen clearly felt that asking the witness to
6 stay against her will was abusive, especially when the deponent had agreed to come back for a
7 second session of deposition. Ms. Humiston then exacerbated the issue by raising her voice and
8 demanding that the witness answer her questions right there. This hostile and abusive behavior
9 terrified Ms. Nahabedian, and Mr. Gresen was well justified in unilaterally ending the deposition.⁵

10 Because Mr. Gresen was justified in ending the deposition due to Ms. Humiston’s hostile
11 and abusive behavior, the Court should deny Defendants’ motion in its entirety.

12 **IV. THIS COURT SHOULD IMPOSE SANCTIONS FOR DEFENDANTS AND**
13 **MR. MICHAELS’ ABUSE OF DISCOVERY PROCEDURES AND THIS**
14 **BASELESS MOTION**

15 “Misuses of the discovery process include, but are not limited to, the following:

16 (c) Employing a discovery method in a manner or to an extent that causes unwarranted
17 annoyance, embarrassment, or oppression, or undue burden and expense.

18 (h) Making or opposing, unsuccessfully and without substantial justification, a motion to
19 compel or to limit discovery.” Cal Code Civ Proc § 2023.010.

20 Furthermore, “the court may impose a monetary sanction ...on one unsuccessfully asserting
21 that another has engaged in the misuse of the discovery process, or on any attorney who advised that
22 assertion, or on both.” Cal Code Civ Proc § 2023.030(a)

23 First, Defendants have asserted that Mr. Gresen abused the discovery process when he
24

25 ⁴At the request of Ms. Humiston and Mr. Gresen. Defendant disingenuously says in the moving
26 papers that “Mr. Gresen took a 40-minute break” or a “40-minute recess” during this time period, as if
27 he decided to delay the deposition for no reason whatsoever. (Burbank’s Notice of Motion, Page 1 Line
9; Declaration of Carol Humiston ¶2).

28 ⁵It should be noted that there were three weeks between the deposition and the due date of
Defendant’s Reply to MSJ. The second session could have easily been scheduled at any date before that
time. However, as noted above Defendants did not attempt to do so until seven weeks later.

1 shielded a third-party witness from abusive tactics by Ms. Humiston. As Mr. Gresen was clearly
2 justified in doing so, Defendants should be sanctioned under Cal Code Civ Proc § 2023.030(a) for
3 having asserted their own unjustifiable position against him.

4 Second, and more importantly, in bringing this Motion Mr. Michaels has abused the
5 discovery process in an attempt to compel the Plaintiffs to pay for the second session of Nayiri
6 Nahabedian – on the terms that Mr. Michaels wishes. This position is clearly abusive. Defendants
7 have no legal authority whatsoever which says that Plaintiffs must conduct the second session of Ms.
8 Nahabedian’s depositions under the same conditions (i.e. videographer and no Discovery Referee) as
9 the first session of deposition.⁶

10 If Defendants wish to have particular conditions available at the second session, such as a
11 videographer, or make the date of the second session a priority, they have been free to notice the
12 deposition for months. Even if Ms. Humiston had asked the questions she wanted to at the first
13 session of deposition, Defendants still anticipated a second session regardless of who noticed it.
14 (Exhibit “A” 76:17-21). Plaintiffs have, in good faith, been offering to pay for the second session –
15 just not on the terms or the time frame that Defendant has been unreasonably demanding.
16 Defendants cannot point to any legal basis upon which to compel Plaintiffs to pay for the second
17 session of deposition on Defendants’ terms and time frame, when Defendants have had the ability to
18 send notice themselves.

19 Therefore, Mr. Michaels and the Defendants should be subject to sanctions for submitting a
20 frivolous motion to compel Plaintiffs to pay for a second session of Ms. Nahabedian’s deposition on
21 their terms. Plaintiffs request an order requiring Mr. Michaels and Defendants to pay Plaintiff’s fees
22 and costs in connection with this motion in the amount of \$2,285.00 and the Discovery Referee’s
23 services related to this Motion.

24 V. CONCLUSION

25 For the foregoing reasons, Plaintiffs respectfully requests that Defendants’ motion be denied,
26

27 ⁶It is highly disingenuous for Defendants to suggest that Plaintiffs are suddenly demanding that
28 the Discovery Referee used at the second session of Deposition solely to increase costs. Use of the
Discovery Referee is now standard at all depositions in this matter. Also, Mr. Michaels agreed to use
the Discovery Referee on April 16, 2010: “We will proceed with the deposition of Nayiri Nahabedian
as you suggest.” (Exhibit “B”)

1 and for an order:

- 2 (1) Requiring Mr. Michaels and Defendants to pay sanctions to Plaintiffs in the amount
3 of \$2,285.00, or such other amount as the Court deems appropriate;
4 (2) Requiring Defendants to pay for the Discovery Referee's services related to this
5 motion.

6 DATE: June 15, 2010

LAW OFFICES OF RHEUBAN & GRESEN

7 By: 
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Joseph M. Levy, Esq.
9 Attorneys for Plaintiffs
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DECLARATION OF SOLOMON E. GRESEN

DECLARATION OF SOLOMON E. GRESEN

I, Solomon E. Gresen, declare as follows:

1. I am an attorney at law duly authorized to practice law before all courts of the State of California, and I am one of the attorneys of record for all Plaintiffs in this case. I am over the age of 18 years of age. The following information is true of my own personal knowledge, or, if stated on information and belief, I am informed and believe such facts to be true.

2. I am familiar with the files and pleadings herein, and if called upon to testify, I could and would competently testify as to the facts stated herein based upon my own personal knowledge. This declaration is written in Opposition to Defendant's Motion for Monetary Sanctions for Misuse of the Discovery Process.

3. I noticed the deposition of third-party witness Nayiri Nahabedian for 3:00 p.m. on February 23, 2010.

4. Initially, I did not anticipate the deposition to last much longer than 5:00 that afternoon.

5. During the deposition, Ms. Nahabedian retrieved documents from her car. The documents Ms. Nahabedian retrieved totaled in excess of 100 pages, and took approximately 40 minutes for her to review and to copy for all parties.

6. During the break, Ms. Nahabedian told me for the first time that she absolutely had to be in Glendale that evening at 6:00 for a civic duty presentation, and did not realize that the deposition would last past 5:00.

7. I told Ms. Nahabedian that I would continue the deposition to a later date that she was available, so long as she agreed on the record to accept service of another subpoena and appear again for deposition testimony, which she did.

8. On the record, Ms. Nahabedian repeated that she would appear for a second session of deposition due to her unavailability. Ms. Humiston, enraged that the witness was no longer available for testimony, attempted to force Ms. Nahabedian to stay for additional questioning. She raised her voice, demanding that her and I switch seats, and loudly insisted that she was going to ask questions.

1 9. Seeing that Ms. Nahabedian looked shocked and upset at Ms. Humiston's hostile
2 demeanor and insistence that she stay past her availability, I said that I would seek a protective order.

3 10. Afterwards, I needed to speak with Ms. Nahabedian for a few minutes to calm her
4 down and assure Ms. Nahabedian that Ms. Humiston did not have the ability to cause her legal
5 trouble due to the manner in which the deposition concluded.

6 11. I anticipate spending approximately 2 hours preparing for and attending the hearing
7 on this motion. My billing rate is \$425.00 per hour.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing
9 is true and correct.

10 Executed this 15th day of June, 2010 in Encino, California.

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12 _____
13 Solomon E. Gresen, Esq.
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DECLARATION OF JOSEPH M. LEVY

DECLARATION OF JOSEPH M. LEVY

I, Joseph M. Levy, declare as follows:

1. I am an attorney at law duly authorized to practice law before all courts of the State of California, and I am one of the attorneys of record for all Plaintiffs in this case. I am over the age of 18 years of age. The following information is true of my own personal knowledge, or, if stated on information and belief, I am informed and believe such facts to be true.

2. I am familiar with the files and pleadings herein, and if called upon to testify, I could and would competently testify as to the facts stated herein based upon my own personal knowledge. This declaration is written in This declaration is written in Opposition to Defendant's Motion for Monetary Sanctions for Misuse of the Discovery Process

3. Attached hereto as "**EXHIBIT A**", is a true and correct copy of pertinent pages of Nayiri Nahabedian's deposition which were cited in the Memorandum of Points and Authorities.

4. Attached hereto as "**EXHIBIT B**", is a true and correct copy of the April 16, 2010 e-mail which was cited in the Memorandum of Points and Authorities.

5. Attached hereto as "**EXHIBIT C**", is a true and correct copy of April 21, 2010 e-mail which was cited in the Memorandum of Points and Authorities.

6. Attached hereto as "**EXHIBIT D**", is a true and correct copy of Wednesday, April 28, 2010 E-mail which as cited in the Memorandum of Points and Authorities.

7. Attached hereto as "**EXHIBIT E**", is a true and correct copy of May 8, 2010 e-mail which as cited in the Memorandum of Points and Authorities.

8. Attached hereto as "**EXHIBIT F**", is a true and correct copy of Mr. Gresen's letter that Plaintiffs had no objection to rescheduling the deposition, provided that the deposition is conducted before the discovery referee which as cited in the Memorandum of Points and Authorities.

9. I spent 4.1 hours preparing this opposition. My billing rate is \$325.00 per hour.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 15TH day of June, 2010 in Encino, California.


Joseph M. Levy, Esq.

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

OMAR RODRIGUEZ; CINDY
GUILLEN-GOMEZ; STEVE
KARGIOSIAN; ELFEGO
RODRIGUEZ; AND JAMAL
CHILDS;

Plaintiffs,

vs.

BURBANK POLICE DEPARTMENT;
CITY OF BURBANK; AND DOES 1
THROUGH 100, INCLUSIVE.

Defendants.

Case No: BC 414 602
Volume 1

DEPOSITION OF NAYIRI NAHABEDIAN

Encino, California

Tuesday, February 23, 2010

REPORTED BY: Hayley Clifford
CSR No. 13436
Certified Shorthand Reporter
Registered Professional Reporter

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

OMAR RODRIGUEZ; CINDY
GUILLEN-GOMEZ; STEVE
KARGIOSIAN; ELFEGO
RODRIGUEZ; AND JAMAL
CHILDS;

Plaintiffs,

vs.

BURBANK POLICE DEPARTMENT;
CITY OF BURBANK; AND DOES 1
THROUGH 100, INCLUSIVE.

Defendants.

Case No: BC 414 602
Volume 1

Videotaped deposition of NAYIRI

NAHABEDIAN, taken on behalf of Plaintiffs, at
15910 Ventura Boulevard, Suite 1610, Encino,
California, beginning at 3:26 p.m. and ending at
5:39 p.m. on Tuesday, February 23, 2010 before
Hayley Clifford, Certified Shorthand Reporter
No. 13436.

1 APPEARANCES OF COUNSEL:

2
3 FOR PLAINTIFFS:

4 LAW OFFICES OF RHEUBAN & GRESEN
5 BY: SOLOMON E. GRESEN, Esq.
6 15910 Ventura Boulevard, Suite 1610
7 Encino, California 91436
8 TEL: (818) 815-2727
9 FAX: (818) 815-2737

10 FOR DEFENDANT, BURBANK POLICE DEPARTMENT:

11 BALLARD, ROSENBERG, GOLPER, & SAVITT, LLP
12 BY: LINDA B. HUREVITZ, Esq.
13 500 North Brand Boulevard, 20th Floor
14 Glendale, California 91203
15 TEL: (818) 508-3700
16 FAX: (818) 506-4827
17 E-MAIL: Lhurevitz@brgslaw.com

18 FOR DEFENDANT, Burbank Police Department:

19 CITY OF BURBANK
20 BY: CAROL A. HUMISTON, Esq.
21 275 East Olive Avenue
22 Burbank, California 91510
23 TEL: (818) 238-5707
24 FAX: (818) 238-5724

25 ALSO PRESENT:

Tim Stehr

VIDEOGRAPHER:

Randy Baldwin

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WITNESS INSTRUCTED NOT TO ANSWER

PAGE LINE
(NONE)

INFORMATION REQUESTED

PAGE LINE
(NONE)

1 Reporter, a copy of which is attached
2 hereto.)

3 BY MR. GRESEN:

4 Q. Can you tell me what those documents are?

5 A. So those are the evaluation forms that I
6 asked the -- the participants to complete, and they
7 were for me so that I can kind of have a sense of
8 -- a feedback from the group.

9 Q. Okay. Now, I'm going to attach those as
10 exhibits. My -- my understanding was that you did
11 not anticipate that this deposition would proceed
12 past --

13 A. 5:00.

14 Q. And because of these documents we've asked
15 you to review, there's a number of documents. It's
16 my understanding that you're unable to continue at
17 this time?

18 A. Yeah, I do have something in Glendale that
19 I need to be at.

20 Q. Okay. Well, I'd like to be able to call
21 you back for a deposition. Will you be willing to
22 accept a subpoena for a subsequent session at the
23 same address that I served you the first time?

24 A. Yes.

25 Q. Okay. Well, on that agreement to continue

1 this deposition at a later time, I would conclude
2 this session of deposition and re-notice for the
3 continued session of the deposition at a date when
4 you are available.

5 MS. HUMISTON: Well, as much as I would
6 like to accommodate Ms. -- I'm sorry.

7 THE WITNESS: Nahabedian. It's all right.

8 MS. HUMISTON: Yes, thank you. I have
9 some questions I'd like to ask her. And if you are
10 going to be using this deposition as you said off
11 the record with respect to a summary judgment
12 motion, I'm going to need to ask her those
13 questions before we stop.

14 MS. GRESEN: Well, then I would suggest
15 that you notice Ms. Nahabedian's deposition at a
16 time when she is able because apparently she is not
17 available right now. And I think requiring her to
18 stay past the time for which she is available is
19 abusive to the witness, and I would ask that you
20 don't do it. In fact, if you intend to make -- ask
21 questions, I'll just put on the record that I will
22 make a protective order with Judge Wayne, and that
23 should nicely end the deposition for now.

24 MS. HUMISTON: Oh, well, and what would be
25 the basis of that protective order?

1 MR. GRESEN: Based upon abuse of the
2 witness because you're not allowing her to testify
3 at a time when she has time to do it. I think it's
4 bullying and it's harassing, and you shouldn't be
5 doing it.

6 MS. HUMISTON: I didn't notice this
7 deposition for 3:00, and I was here on time. So,
8 no, I'm not agreeable. I would like to ask her
9 some questions. So let's switch seats --

10 MR. GRESEN: I'm --

11 MS. HUMISTON: -- and I can ask her my
12 questions with respect to --

13 MR. GRESEN: I'm going to put on the
14 record --

15 MS. HUMISTON: Excuse me. I'm speaking.

16 MR. GRESEN: I don't care. I'm --

17 MS. HUMISTON: I'm going to ask her the
18 questions with respect to the issues that you've
19 asked her the questions about, and then she can
20 come back and we can talk about these documents and
21 other issues --

22 MR. GRESEN: I'm going to make a --

23 MS. HUMISTON: So that the record is -- is
24 -- is complete.

25 MR. GRESEN: I'm going to make a motion

1 A. I answered a few questions.

2 Q. What were those questions about?

3 A. They were about how did I -- how did I
4 happen to do the training or who contacted me
5 first, that sort of thing. And I -- after a few
6 questions, I really had to get off the phone; and I
7 said that I would call back at 5:30, and I got
8 bogged down, and I didn't.

9 Q. Were any questions about me or this
10 office?

11 A. Have I been subpoenaed was a question, and
12 I said yes.

13 Q. Anything else you recall from that
14 conversation?

15 A. Well, I -- I suddenly remembered, when I
16 was having a conversation, was that I needed to
17 bring a resume. So I kind of just said, "Oh, I'm
18 supposed to bring a resume."

19 And she said it's -- "Well, it's a good
20 thing that I called so, you know, you could
21 remember something like this."

22 Q. Okay. I would like to review the
23 documents that you have. You said you had some
24 notes that you wanted to review. I wanted to give
25 you an opportunity to review them; but as

1 Ms. Humiston noted, it would be great if we could
2 have a copy of those. I'll make copies for
3 everybody, and then we'll give you a period of time
4 to look them over, and then we can --

5 A. All right. So this -- this is something
6 that was for me only. So --

7 Q. They're your notes.

8 A. And this is something that I, you know --
9 they are a summary or talley, really, of -- of the
10 question of the evaluation; and they were supposed
11 to be for me. And so I'm not going about this, but
12 go ahead.

13 Q. I'll go ahead and make copies for
14 everybody. We'll go off the record, and we'll let
15 you have 20 minutes to resume. As soon as you're
16 done, we'll come back on.

17 A. Great.

18 MR. GRESEN: Off the record.

19 THE VIDEOGRAPHER: This marks the end of
20 Video Number 1. We're off the record. The time is
21 4:49 p.m.

22 (Recess taken.)

23 THE VIDEOGRAPHER: We are back on the
24 record. The time is 5:33 p.m. This marks the
25 beginning of Video Number 2 in the deposition of

1 I, NAYIRI NAHABEDIAN, do solemnly declare
2 under penalty of perjury that the foregoing is my
3 deposition under oath; that these are the questions
4 asked of me and my answers thereto; that I have
5 read same and have made the necessary corrections,
6 additions, or changes to my answers that I deem
7 necessary.

8 In witness thereof, I hereby subscribe my
9 name this day _____, 2010.

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16 _____
17 NAYIRI NAHABEDIAN
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1 CERTIFICATION
2 OF
3 CERTIFIED SHORTHAND REPORTER
4

5 I, the undersigned, a Certified Shorthand
6 Reporter of the State of California, do hereby
7 certify:

8 That the foregoing proceedings were taken
9 before me at the time and place herein set forth;
10 that any witness in the foregoing proceedings,
11 prior to testifying, were place under oath; that a
12 verbatim record of the proceedings was made by me
13 using machine shorthand which was thereafter
14 transcribed under my direction; further, that the
15 foregoing is an accurate transcription thereof.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney of any of the parties.

19 IN WITNESS WHEREOF, I have this date
20
21 subscribed my name _____.

22 Dated: February 26, 2010

23 Certificate Number 13436
24
25

EXHIBIT B

Solomon Gresen

From: Michaels, Larry [LAM@msk.com]
Sent: Friday, April 16, 2010 10:56 AM
To: Solomon Gresen
Cc: Humiston, Carol Ann; Linda C. Miller Savitt; von Grabow, Veronica
Subject: Meet & confer re deposition of Nayiri Nahabedian and our demand for supplemental responses to Burbank's Special Interrogatories

Mr. Gresen,

This is in response to your letter of April 9, 2010, regarding the deposition of Nayiri Nahabedian and our demand for supplemental responses to Burbank's Special Interrogatories, Set One.

With respect to your position on the deposition of Ms. Nahabedian, we will proceed with the deposition as you suggest. However, we expect your office to arrange and pay for the court reporter and videographer, since this was your deposition in the first place, and since your conduct in stopping the deposition is the only reason a second day is now needed for the deposition to resume. Please confirm that this is acceptable, and advise us of your available dates for the deposition to proceed.

Regarding our demand for supplemental interrogatory responses, we are still awaiting your position. Your letter promised a response by the close of business today. We look forward to receiving that response.

Lawrence A. Michaels | Mitchell Silberberg & Knupp LLP | 11377 West Olympic Blvd., Los Angeles, CA 90064 | direct: 310 312-3766 | fax: 310 312-3787 | lam@msk.com | www.msk.com

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EXHIBIT C

Solomon Gresen

From: Solomon Gresen
Sent: Wednesday, April 21, 2010 5:28 PM
To: 'Michaels, Larry'
Subject: RE: Meet & confer re deposition of Nayiri Nahabedian and our demand for supplemental responses to Burbank's Special Interrogatories

Mr. Michaels:

As you will recall, at the time the first session of Mrs. Nahabedian's deposition was interrupted, I was in the process of copying her production responses for the purpose of further examination on the record. If you wish, I will have Shannon contact your assistant and Mrs. Nahabedian to schedule the second session of the deposition for the purpose of concluding my examination. I will be happy to begin at 10:00 a.m., and schedule for the full day, so that you should have sufficient time following the conclusion of my examination to conduct your own examination of the witness.

If, however, you wish to conduct your examination before I conclude mine, feel free to have your assistant contact Shannon for scheduling purposes and simply notice your own deposition. Please do so at 10:00 a.m., and schedule for the full day, so I will have time to conclude my examination of the witness. Of course, should you choose to proceed in this manner, we will only agree to pay for our copy of the deposition. We will not "arrange and pay for the court reporter and videographer" as you demanded, nor do we agree with your characterization of the reason for the termination of the first session of Mrs. Nahabedian's deposition. Please advise as to the manner in which you wish to proceed.

Regarding the discovery dispute: Having reviewed the responses and objections to the discovery in dispute, we are of the opinion that the responses were appropriate. None of the Plaintiffs have any personal knowledge of the matters requested, and have so stated in their responses. Accordingly, no further responses will be forthcoming.

Again, please advise as to the manner in which you wish to proceed with Mr. Nahabedian's deposition.

Solomon E. Gresen, Esq.
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EXHIBIT D

Solomon Gresen

From: Michaels, Larry [LAM@msk.com]
Sent: Wednesday, April 28, 2010 7:47 AM
To: Solomon Gresen
Cc: Isavitt@brgslaw.com; Humiston, Carol Ann; von Grabow, Veronica
Subject: FW: Meet & confer re deposition of Nayiri Nahabedian and our demand for supplemental responses to Burbank's Special Interrogatories

Mr. Gresen:

Please advise when you are willing to resume Ms. Nahabedian's deposition pursuant to the original deposition notice. If the delay is not undue, we are willing to proceed in that manner. If there is an undue delay, we will seek relief from Judge Wayne.

With respect to the interrogatory responses, your assertion that plaintiffs have no personal knowledge of the requested information is not sufficient. Plaintiffs have raised the contention that documents were shredded. Lt. Rodriguez testified about the alleged shredding of documents at his deposition, under oath. Further, you have repeatedly asked witnesses about this issue in depositions. Plaintiffs must have some basis for making this contention. We are entitled to know what facts the contention is based on. Your responses say that this information is equally available to defendants. That is patently untrue. Defendants have no idea where this allegation comes from, or the factual basis for the allegation. If plaintiffs do not have personal knowledge of any supposed document shredding, they must have learned about it from someone else. We are entitled to know from whom, and what plaintiffs were told.

If you are willing to provide this information, please notify us of your intent to supplement your interrogatory responses. Otherwise, we will seek relief from Judge Wayne.

Lawrence A. Michaels | Mitchell Silberberg & Knupp LLP | 11377 West Olympic Blvd., Los Angeles, CA 90064 | direct: 310 312-3766 | fax: 310 312-3787 | lam@msk.com | www.msk.com

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From: Solomon Gresen [mailto:seg@rglawyers.com]
Sent: Wednesday, April 21, 2010 5:20 PM
To: Michaels, Larry
Subject: RE: Meet & confer re deposition of Nayiri Nahabedian and our demand for supplemental responses to Burbank's Special Interrogatories

Mr. Michaels:

EXHIBIT E

Solomon Gresen

From: Solomon Gresen
Sent: Saturday, May 08, 2010 2:13 PM
To: 'Michaels, Larry'
Cc: lsavitt@brgslaw.com; Humiston, Carol Ann; Shannon Ford; Daphne Johnson
Subject: RE: Meet & confer re deposition of Nayiri Nahabedian and our demand for supplemental responses to Burbank's Special Interrogatories

Larry;

I am in trial right now, as you well know. Have your assistant schedule Ms. Nahabedian's deposition with Ms. Moyer (for Judge Wayne) and my secretary Shannon. Then prepare a notice of the deposition, and we will appear. Thank you for your anticipated cooperation in this regard.

We disagree, however, concerning the discovery dispute. As you said, Lt. Rodriguez responded to questions at his deposition, as did Officer Karagiosian. I believe that the testimony revealed only rumors from an unrecalled source or two. The responding parties have no personal knowledge concerning the shredding. You will receive no further responses. File a motion with Judge Wayne if you must. But we do not believe that Judge Wayne will order us to track down rumors on your client's behalf, assuming of course, that it is even possible for us to do so. Your clients seem quite self-sufficient in that regard.

Please do not feel compelled to respond to this. We will provide no further responses absent an order from the Discovery Referee - and I will be in trial for the next few days, anyway, and will not have time to even read your missive. So save your client a dollar or two.

Solomon E. Gresen, Esq.
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EXHIBIT F

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STEVEN V. RHEUBAN
SOLOMON E. GRESEN

STEVEN M. CISCHKE
ROBERT C. HAYDEN
JOSEPH M. LEVY
INDIA S. THOMPSON

April 9, 2010

VIA EMAIL AND U.S. MAIL DELIVERY

Lawrence A. Michaels, Esq.
Mitchell Silberberg & Knupp LLP
11377 West Olympic Boulevard
Los Angeles, CA 90064-1683

Re: Omar Rodriguez, et al. v. Burbank Police Department, et al.
LASC Case No. BC 414 602
Meet and Conference Re Discovery Issues

Dear Mr. Michaels:

We are in receipt of your letter of April 9, 2010, requesting that we meet and confer concerning the continuation of the deposition of Nayiri Nahabedian and responses to Defendant's Special Interrogatories, Set One. This letter is sent in an effort to amicably meet and confer concerning these issues so that we may resolve our disputes without the necessity of further court intervention.

Deposition of Nayiri Nahabedian

As intimated in your correspondence, it appears that the exigency for a protective order has passed. Accordingly, Plaintiffs' have no objection to rescheduling Ms. Nahabedian's deposition for the purpose of further examination, provided that deposition is conducted before our discovery referee. We will, therefore, send a request to Ms. Moyer today to request information concerning Judge Wayne's availability for a one half day deposition. Please contact me at your earliest convenience if you do not believe that Ms. Nahabedian's deposition can be completed in one half day.

Hopefully, you and your client will find our agreement to resume Ms. Nahabedian's deposition is an acceptable resolution to this discovery dispute. Please contact me at your earliest convenience if there are additional matters to be addressed.

LAW OFFICES OF RHEUBAN & GRESEN

Lawrence A. Michaels, Esq.
April 9, 2010
Page 2

Objections to Special Interrogatories

Having just received your letter, we have not yet begun the process of reviewing the interrogatories and responses so that we may determine the appropriate course of action. I am scheduled to begin trial in LASC Central, Department 20 on Monday, April 12, 2010, and I am informed that we are first on the list. As a result, I will not be able to personally meet and confer with you on this issue. I will, however, assign this matter to an associate for review and response by the end of next week. I do not think that we will be able to respond to your letter by next Tuesday, as requested, and I would hope that you would refrain from filing any motion until you receive our response to your meet and confer. The verifications, however, will be found and delivered to your office forthwith.

Please contact me at your earliest convenience if you wish to discuss the above. Otherwise, as mentioned above, you will receive additional response to your meet and confer letter by close of business Friday, April 16, 2010.

Thank you for your anticipated cooperation in this regard.

Very truly yours,

LAW OFFICES OF RHEUBAN & GRESEN

Solomon E. Gresen

SEF/dj

cc: Linda Savitt, Esq.

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